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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

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| JONOVICH COMPANIES, INC., an Arizona corporation,<br><br>Plaintiff/Counterdefendant/ Appellant,<br><br>v.<br><br>CITY OF COOLIDGE, an Arizona municipal corporation,<br><br>Defendant/Counterclaimant/ Appellee. | 2 CA-CV 2011-0029<br>DEPARTMENT B<br><br>MEMORANDUM DECISION<br>Not for Publication<br>Rule 28, Rules of Civil Appellate Procedure |

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. CV200802391

Honorable William J. O'Neil, Judge

AFFIRMED

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V Á S Q U E Z, Presiding Judge.

**¶1** Appellant Jonovich Companies, Inc. (Jonovich) appeals from the trial court's judgment in favor of defendant/appellee City of Coolidge (the City) on Jonovich's claims for breach of contract and unjust enrichment. For the reasons set forth below, we affirm.

## Factual and Procedural Background

**¶2** On appeal from a summary judgment, "we view the facts and all reasonable inferences from them in the light most favorable to the nonmoving party." *Aranda v. Cardenas*, 215 Ariz. 210, ¶ 2, 159 P.3d 76, 78 (App. 2007). In February 2006, the City awarded Jonovich a contract for the construction of improvements to the City's waste water treatment plant including the installation of a gravity sewer pipeline.[1] The design and engineering services for the project were provided by Kennedy/Jenks Consultants, Inc. (Kennedy/Jenks) under a separate contract with the City. The plans, drawings, and specifications prepared by Kennedy/Jenks required sand and gravel approved by the Maricopa Association of Governments (MAG materials) to be used as the bedding material for the pipeline and native soil to be used as the backfill material to cover the pipe. Jonovich used MAG materials as the bedding material for the initial section of the pipeline from manhole #3 to manhole #2. But it used native soil both as the embedment and backfill material for the second and third sections, from manhole #2 to manhole #1 and from manhole #1 to the lift station. During construction, Kennedy/Jenks observed

[1]The pipeline was approximately 1,030 feet long and consisted of the three following interconnected sections: manhole #3 to manhole #2 (320 feet), manhole #2 to manhole #1 (530 feet), and from manhole #1 to the lift station (180 feet).

and inspected Jonovich's performance but never indicated that Jonovich's construction method or the actual installation was inadequate.

**¶3** Four months after the pipeline had been completed, the pipe manufacturer conducted tests that revealed several sections of the pipe had deflected in excess of the permissible five percent. The City, through Kennedy/Jenks, notified Jonovich that the deflected portions of the pipeline constituted "defective work" under the contract and requested Jonovich to make the necessary repairs. By letter dated March 1, 2007, Jonovich responded with a proposed "plan of action," but also stated it intended to seek reimbursement for the cost of repair or replacement if it later was determined that Jonovich was not responsible for the defects.

**¶4** Although Jonovich subsequently replaced the deflected sections of the pipeline at its own expense, it retained third-party engineering experts to determine the cause of the pipe's deflection. The experts discovered the project was adjacent to a water retention basin, whose water levels had risen in the months following the pipeline installation. According to the experts, the intrusion of moisture into the pipeline trenches caused both the MAG materials and native soil bedding materials to lose stiffness and strength. This not only weakened the side support for the pipe but, because it was buried twenty to twenty-two feet, the pipe selected for the project also was unable to withstand the weight of the backfill material and, as a result, deflected beyond five percent. Jonovich's experts concluded the defective pipeline could be attributed to a combination of these factors.

**¶5** On August 5, 2008, Jonovich filed this lawsuit against the City for breach of contract and unjust enrichment, seeking damages in excess of $1.4 million for its cost to repair and replace the pipeline. It alleged the pipeline's failure was due to the negligent and improper design by Kennedy/Jenks, "specifically the failure to know of the soil conditions and the failure to properly design the pipeline based upon the soil conditions to be found at and around the depth of the pipeline trench."

**¶6** On October 21, 2009, the City filed a motion for summary judgment on Jonovich's breach of contract claim, arguing that because Jonovich "[failed to] construct the pipeline in conformance with the plans and specifications," the City was entitled to a judgment as a matter of law. After oral argument, the trial court issued a minute entry order granting summary judgment in favor of the City. The court subsequently denied Jonovich's motion for reconsideration.

**¶7** The City then filed a second motion for summary judgment on Jonovich's alternative claim for unjust enrichment. The City argued that the doctrine of unjust enrichment did not apply given the existence of a valid, enforceable contract between the City and Jonovich and that, in any event, the City had not been unjustly enriched. After hearing argument, the trial court issued its minute entry order granting the City's motion for summary judgment.

**¶8** On December 14, 2010, the trial court signed and entered a final judgment pursuant to Rule 54(b), Ariz. R. Civ. P., granting both motions for summary judgment in favor of the City and dismissing Jonovich's claims. This appeal followed. We have jurisdiction pursuant to A.R.S. § 12-2101(A)(1).

## Standard of Review

**¶9** Summary judgment is proper when "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." Ariz. R. Civ. P. 56(c)(1). We review de novo a grant of summary judgment, construing all facts and reasonable inferences in favor of the party against whom judgment was entered. *See Cannon v. Hirsch Law Office, P.C.*, 222 Ariz. 171, ¶ 36, 213 P.3d 320, 331 (App. 2009). Additionally, we review a trial court's interpretation and construction of a contract de novo. *Burke v. Voicestream Wireless Corp. II*, 207 Ariz. 393, ¶ 11, 87 P.3d 81, 83 (App. 2004).

## Discussion

### Breach of Contract/The *Spearin* Rule

**¶10** Relying on *United States v. Spearin*, 248 U.S. 132 (1918), Jonovich contends the trial court erred in granting summary judgment in favor of the City on Jonovich's breach of contract claim because there was a genuine issue of material fact as to the cause of the defective pipeline. Specifically, Jonovich claims it presented undisputed evidence that "the pipeline failed because it was improperly designed given the soil conditions present and the depth the pipe was buried."

**¶11** In *Spearin*, the Court held that when a "contractor is bound to build according to plans and specifications prepared by the owner, the contractor will not be responsible for the consequences of defects in the plans and specifications" (the *Spearin*

rule).[2] *Id*. at 136.. The *Spearin* rule has been recognized in Arizona. *See Chaney Bldg. Co. v. City of Tucson*, 148 Ariz. 571, 574, 716 P.2d 28, 31 (1986). It is consistent with the construction law principle that an owner "impliedly warrants the adequacy of the plans and specifications supplied by the owner which he requires the contractor to follow." *Id*., *citing e.g.*, Thomas C. Horne, *Arizona Construction Law* § 107, at 39 (State Bar of Arizona 1978). However, "[t]he *Spearin* rule applies to design specifications only; it does not apply to performance specifications." *Willamette Crushing Co. v. Arizona ex rel. Dep't of Transp.*, 188 Ariz. 79, 81, 932 P.2d 1350, 1352 (App. 1997). "Design specifications precisely detail the manner in which the work is to be done" and the "warranty is implied only in design specifications which are inflexible." *Id.* at 81-82, 932 P.2d at 1352-53. In contrast, a performance specification provides the objective without specifying the method of obtaining that objective. *Id.* at 81, 932 P.2d at 1352.

[2]In *United States v. Spearin*, Spearin contracted to build a dry dock at the Brooklyn Navy Yard in accordance with plans and specifications prepared by the government. 248 U.S. 132, 133 (1918). But before the work of constructing the dry dock could begin, it was necessary to divert and relocate a section of an existing six-foot brick sewer that intersected the job site. *Id*. The requirements prescribing the dimensions, material, and location of the sewer section to be replaced were fully complied with by Spearin, and the new section was accepted by the government as satisfactory. *Id*. at 133-34. About a year after the relocation of the six-foot sewer, a sudden downpour of rain caused the sewer to break and flood the construction site. *Id.* at 134. Investigation revealed that a dam in a connecting sewer (of which the parties had been unaware) had caused the failure of the relocated sewer. *Id*. When Spearin refused to make the necessary repairs without additional compensation, the government rescinded the contract. *Id*. at 135. In holding the government responsible, the Court held that because the government required Spearin to build according to its plans and specifications, Spearin was not liable for the consequences of defects in the plans and specifications. *Id.* at 137-38. The Court reasoned, in part, that "the insertion of the articles prescribing the character, dimensions and location of the sewer imported a warranty that if the specifications were complied with, the sewer would be adequate." *Id.* at 137.

**¶12** Here, the City provided the design specifications and plans for the project and Jonovich was required to follow them. Under *Spearin*, the City thus impliedly warranted that Jonovich would not be liable for any defects provided the pipeline was constructed according to the specifications. But the project's specifications required Jonovich to use MAG materials as the bedding for the pipeline,[3] and it is undisputed that in two of three sections of the pipeline, Jonovich instead had used native soil.

**¶13** We have found no Arizona cases addressing whether a contractor's deviation from the specifications voids *Spearin*'s implied warranty. But federal courts that have addressed the issue consider the contractor's compliance with the allegedly defective design specifications to be an important factor in applying the *Spearin* rule. *See Al Johnson Constr. Co. v. United States*, 854 F.2d 467, 469-70 (Fed. Cir. 1988). According to these courts, if the contractor failed to comply fully with the faulty design specifications, recovery on the implied warranty is precluded. *Id.*; *see also Travelers Cas. & Sur. of Am. v. United States*, 74 Fed. Cl. 75, 89-90 (2006) ("[T]he contractor must fully comply with and follow the design specifications, although faulty, to enjoy the

[3]The City argues, as it did below, the *Spearin* rule has no application because the warranty extends only to "design specifications," and the use of the type of bedding material by Jonovich was a "performance specification." We disagree. The contract specifically required the use of MAG materials, and it did not permit Jonovich to exercise discretion to deviate from that requirement. *See Willamette Crushing Co.*, 188 Ariz. at 81-82, 932 P.2d at 1352-53. The fact that Jonovich deviated from the specifications, or that it sought and allegedly received authorization from the City to make a change, does not render the specifications "performance specifications." Accordingly, the specification requiring the use of MAG materials was a design specification, thereby allowing for application of the *Spearin* rule. In concluding Jonovich had no claim under the *Spearin* rule because it deviated from the specifications, the trial court implicitly found the City's requirement to use MAG materials was a design specification.

protections of the implied warranty."). In *Al Johnson*, the court reasoned that the "strong policy" in restricting the implied warranty to those who have complied fully with the specifications "would not be served by allowing the implied warranty to run to one who has not done what he contracted to do and fails to satisfactorily explain why not." 854 F.2d at 470. We find that reasoning persuasive. Jonovich deviated from the City's specifications and, as a consequence, the *Spearin* rule does not apply.

**¶14** But Jonovich argues it did not deviate from the contract's specifications because Kennedy/Jenks verbally had authorized the use of native soil as the backfill material. Moreover, Jonovich notes that Kennedy/Jenks conducted daily inspections of the work site and never questioned the use of the non-specified material. Jonovich therefore contends an inference can be made that Kennedy/Jenks approved the use of the non-specified material. To the extent Jonovich claims it did not deviate from the design specifications because the contract was modified to permit the use of native soil, either verbally or through course of conduct, we disagree.[4]

**¶15** Article 9.1 of the contract provides that any changes could be made only by a written "Change Order" or "Work Directive Change" issued by the City. Although Article 9.9 states that "[t]he Engineer has the authority to order minor changes in the Work . . . ," Article 9.2 provides:

[4]Notably Jonovich did not raise this argument in its written response to the City's motion for summary judgment and addressed it only in response to the trial court's inquiry during oral argument. But because the City did not object to Jonovich's argument and responded to it on the merits, we deem this argument preserved for review and address it on appeal.

> [Jonovich] expressly agrees that it shall not consider any order, instruction, Clarification, Response to a Request for Information or any other communication either written or oral given intentionally or unintentionally by the Engineer, [the City] or any other person as authorization or direction to do work that would cause a change in Contract Time or Price unless it is a Change Order or Work Directive Change signed by the [City].[5]

And as to Jonovich's contention that Kennedy/Jenks' failure to object to the use of native soil following its site visits constituted its authorization for Jonovich to use non-specified materials, Article 7.2 of the contract also provides that "[Jonovich] shall not rely upon the Engineer's site visits nor raise as a defense to any claims of defective work, that the Engineer visited the site or observed the site."

**¶16** Given the express language of the contract, and considering that Jonovich had requested and received other written change orders approved by the City, Jonovich cannot reasonably argue that the engineer's verbal authorization or failure to object to the use of non-specified material constituted a valid modification of the contract's terms. Kennedy/Jenks had no authority, either verbally or through course of conduct, to change the design specifications. *See Kaman Aerospace v. Ariz. Bd. of Regents*, 217 Ariz. 148, ¶ 26, 171 P.3d 599, 606 (App. 2007) (course of conduct by unauthorized official cannot

[5]In its motion for summary judgment, the City relied upon Article 9.2 specifically to support its argument that "[a]lthough Jonovich claims it was given verbal authorization to use the native materials, there is no Change Order or Work Directive Change issued, or signed by the parties, permitting the use of native soils . . . ." For the first time in its reply brief in this court, Jonovich argues a written change order was not required because only those directives that would cause a change in time or price required written authorization by the City. Because Jonovich neither raised this argument in the trial court, nor in its opening brief, we do not address it further. *See Dawson v. Withycombe*, 216 Ariz. 84, ¶ 91, 163 P.3d 1034, 1061 (App. 2007) (argument raised for first time in reply brief waived).

bind public entity); *Porta House, Inc. v. Scottsdale Auto Lease, Inc.*, 120 Ariz. 115, 119, 584 P.2d 579, 583 (App. 1978) (persons dealing with public officers or agents "charged with notice" of extent and limits of authority); *Sch. Dist. No. One of Pima Cnty. v. Lohr*, 17 Ariz. App. 438, 439, 498 P.2d 512, 513 (1972) (same). Accordingly, we conclude that because Jonovich deviated from the contract's specifications without proper authorization, the trial court did not err by ruling in favor of the City on this issue.[6]

**¶17** Jonovich argues, however, as it did below, that even if it deviated from the specifications by using the native soil, an issue of fact exists as to whether the pipeline would have failed in any event. Jonovich points to the fact that deflection also occurred in certain sections of the pipeline where MAG materials had been used. A contractor still may maintain a claim under the *Spearin* rule if it can establish that the deviation was entirely irrelevant or had no logical connection to the project's failure. *Al Johnson*, 854 F.2d at 470 (placing burden on contractor to prove nonconformance to specifications had no logical relationship, or had been entirely irrelevant, to alleged defect).

[6]In granting summary judgment in favor of the City on Jonovich's *Spearin* rule claim, the trial court relied on the opinion of Jonovich's engineering expert to conclude that Jonovich deviated from the contract specifications. Specifically, the court stated that Jonovich "by its own expert's conclusions deviated from the contract specifications when it used native fill instead of the specified MAG sand or gravel." A determination that Jonovich deviated from the contractual provisions is a question of law that depended on an independent determination of whether the City authorized the use of native soil, and such questions are outside of the expert's area of expertise. *See Webb v. Omni Block, Inc.*, 216 Ariz. 349, ¶ 17, 166 P.3d 140, 145 (App. 2007) (expert may not testify to legal conclusions). The expert concluded the use of native soil was inappropriate under the site's conditions and correctly observed that "there is a dispute as to whether Kennedy/Jenks authorized the use of the native material in the pipe zone." Accordingly, the trial court's reliance on the expert's statement to support its ruling was proper.

**¶18** On the record before us, we agree with the trial court's finding that Jonovich did not meet its burden "that the deviation is entirely irrelevant." The court concluded correctly that Jonovich's "argument that it was not a substantial cause of the failure is not relevant as it is entirely speculative and the *Spearin* Doctrine does not engage in such speculative analysis." According to Jonovich's own experts, the use of native soil was responsible, at least in part, for the pipeline's failure.[7] Thus, even assuming other causes contributed to the pipeline's deflection, Jonovich's deviation from the design specifications was not entirely irrelevant as a cause of the defect. The trial court did not err in granting summary judgment in favor of the City on Jonovich's breach of contract claim.[8]

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[7]Jonovich's engineering expert, Fred Nelson, concluded in his report that "[the] pipeline failed expectations due to inadequate design, inappropriate materials in the pipe zone, coupled with moisture intrusion events reaching the trench . . . ." Dr. A. P. Moser, another of Jonovich's engineering experts, opined that "[t]he native soils . . . are not acceptable in the pipe zone for the fiberglass type pipe used on this project." He reasoned that "this soil is more difficult to compact to the required density."

[8]Jonovich argues the trial court erred in relying on *Al Johnson* because that case, unlike this one, involved an evidentiary hearing at which both parties had an opportunity to introduce witnesses and exhibits. Thus, Jonovich maintains, the court could not have decided on summary judgment whether Jonovich met its burden of demonstrating that its deviation from the specifications was entirely irrelevant. We agree with the court's determination that the City demonstrated the absence of disputed material facts. The City established Jonovich's deviation from the specifications was not entirely irrelevant in light of Jonovich's expert's opinion that the use of native materials was one of the causes of the pipeline's failure. *See Nat'l Bank of Ariz. v. Thruston*, 218 Ariz. 112, ¶ 22, 180 P.3d 977, 982 (App. 2008) (moving party need only point out, by specific reference to relevant discovery, that no evidence exists to support essential element of nonmoving party's claim). Similarly, Jonovich provides no support for its argument that the City could not sustain its burden on summary judgment because discovery was not complete and the City had neither retained its own experts nor relied on its own evidence. Because Jonovich does not support this argument with any authority, we do not consider it further.

**Unjust Enrichment**

**¶19** Jonovich next argues the trial court erred in granting summary judgment on its claim of unjust enrichment. Specifically, Jonovich contends there was a genuine issue of material fact as to whether the pipeline's failure was due, at least in part, to the City's defective design, and whether the City to that extent was unjustly enriched.

**¶20** "Unjust enrichment occurs when one party has and retains money or benefits that in justice and equity belong to another." *Trustmark Ins. Co. v. Bank One, Ariz., NA*, 202 Ariz. 535, ¶ 31, 48 P.3d 485, 491 (App. 2002). To prove unjust enrichment, a party must show an enrichment, an impoverishment, a connection between the enrichment and impoverishment, the absence of justification for the enrichment and the impoverishment, and "the absence of a legal remedy." *Id.* However, "a party's right to seek unjust enrichment is not controlled by whether the party has an 'adequate' remedy at law—in the sense of providing all the relief the party desires—but by whether there is a contract which governs the relationship between the parties." *Id.* n.2. Thus, if there is "a specific contract which governs the relationship of the parties, the doctrine of unjust enrichment has no application." *Brooks v. Valley Nat'l Bank*, 113 Ariz. 169, 174, 548 P.2d 1166, 1171 (1976).

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*See Schabel v. Deer Valley Unified Sch. Dist. No. 97*, 186 Ariz. 161, 167, 920 P.2d 41, 47 (App. 1996) ("Issues not clearly raised and argued in a party's appellate brief are waived."); *see also* Ariz. R. Civ. App. P. 13(a)(6). In any event, as we noted above, the City was required to demonstrate only the absence of genuine issues of material fact, which it did using the report prepared by Jonovich's expert.

**¶21** Here, Jonovich and the City have a valid, enforceable contract that specifies each party's rights and obligations. The contract, therefore, provides the basis for any claim Jonovich could have asserted against the City, including but not limited to the breach of contract claim pursuant to the *Spearin* rule. Jonovich has not challenged the validity or existence of a contract governing its relationship with the City. Accordingly, it has a contract remedy and therefore is barred from pursuing its unjust enrichment claim.

**¶22** Relying on *Adelman v. Christy*, 90 F. Supp. 2d 1034 (D. Ariz. 2000), Jonovich nonetheless argues it is entitled to recover under an unjust enrichment theory even if it had a legal remedy in the form of a breach of contract claim. We conclude Jonovich's reliance on *Adelman* is misplaced. There, the plaintiff sought to recover for research services she had provided the defendant author and publisher of a book, alleging both breach of contract and unjust enrichment claims. 90 F. Supp. 2d at 1036. Characterizing the court's language in *Brooks* as "misleadingly overbroad," the court in *Adelman* stated, "[t]he mere existence of a contract governing the dispute does not automatically invalidate an unjust enrichment alternative theory of recovery." 90 F. Supp. 2d at 1045. The court concluded the plaintiff could pursue an unjust enrichment claim as an alternative theory in conjunction with her breach of contract claim, but her claims would be subject to only one recovery. *Id.* at 1045-46.

**¶23** But in *Trustmark*, Division One of this court, relying on *Brooks*, held a plaintiff could not "avoid possible contractual limitations on its recovery by resorting to an unjust enrichment cause of action." *Trustmark*, 202 Ariz. 535, ¶ 37, 48 P.3d at 493.

In *Trustmark*, the plaintiff had alleged the defendant bank had been unjustly enriched when it failed to complete wire transfers as instructed. *Id.* ¶¶ 4, 7, 48 P.3d at 487. The plaintiff did not assert a breach of contract claim because "the contractual documents eliminated recovery or significantly limited the amount recoverable for breach of contract." *Id.* ¶ 7, 48 P.3d at 487. Relying on *Adelman*, the plaintiff argued it could "pursue an unjust enrichment claim even if it had a legal remedy in the form of a breach of contract claim." *Trustmark*, 202 Ariz. 535, ¶ 36, 48 P.3d at 492. Noting that the plaintiff was not seeking recovery on an unjust enrichment claim as an "alternative" to a contract claim, but seeking to avoid express—and unfavorable—contract terms, the court found *Brooks* was "controlling" and "more on point" than *Adelman*. *Trustmark*, 202 Ariz. 535, ¶ 37, 48 P.3d at 493.

**¶24** But Jonovich asserts its unjust enrichment claim was based upon its March 1, 2007, letter, not the existing contract with the City. Jonovich maintains it did not agree the pipeline failure was "defective work" under the contract and that it undertook the repair work pursuant to its March 1, 2007, letter, in which it notified the City it would seek reimbursement if it was found not responsible for the project's failure. Jonovich argues the letter, not the contract, governed the parties' rights and obligations relating to the repair work on the pipeline. We disagree.

**¶25** After the pipe manufacturer's tests showed the pipeline had deflected beyond the permissible five percent, the City notified Jonovich that the entire pipeline installation was "defective work" under the contract. The City asked Jonovich to present

a plan to correct or replace the pipe installation as required by the contract.[9] We conclude Jonovich's letter was simply an acknowledgement of and a response to the City's notice of defective work and request to repair under the contract; it did not supersede the terms of the underlying contract. *See Angus Med. Co. v. Digital Equip. Corp.*, 173 Ariz. 159, 164, 840 P.2d 1024, 1029 (App. 1992) ("One party to a written contract cannot unilaterally modify it without the assent of the other party."); *see also Muchesko v. Muchesko*, 191 Ariz. 265, 268, 955 P.2d 21, 24 (App. 1997) ("The essential elements of a valid contract are an offer, acceptance, consideration, a sufficiently specific statement of the parties' obligations, and mutual assent."). Under the circumstances, the City's failure to reply to Jonovich's letter did not amount to an acceptance of its terms.

**¶26** The trial court therefore did not err in granting summary judgment to the City on Jonovich's unjust enrichment claim.[10]

[9]Pursuant to the contract, "[Jonovich] shall promptly correct or replace: (1) work rejected by the Engineer as being Defective, and (2) work that is Defective whether or not rejected by the Engineer." "[Jonovich] shall bear the cost of correcting Defective Work including consequential costs, engineering services and attorneys' fees made necessary thereby." Defective work is defined to include "work that is unsatisfactory, faulty, deficient, or leaks, breaks, fails or does not conform to the Contract Documents."

[10]Jonovich argues the trial court erred in the application of law when it based its decision on the determination that "the contract as a matter of law was not modified." Jonovich maintains that "an unjust enrichment claim has nothing to do with modifying a contract." Because Jonovich does not develop this argument or support it with authority, we do not consider it further. *See Deer Valley Unified Sch. Dist. No. 97*, 186 Ariz. at 167, 920 P.2d at 47; Ariz. R. Civ. App. P. 13(a)(6).

## Disposition

**¶27** For the reasons set forth above, we affirm the trial court's judgment and award attorney fees and costs on appeal to the City upon compliance with Rule 21, Ariz. R. Civ. App. P.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge